

TITLE 24
JUDICIARY AND JUDICIAL
PROCEDURE

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TITLE 24
JUDICIARY AND JUDICIAL PROCEDURE

CHAPTER I – NISQUALLY TRIBAL COURT POWERS AND PROCEDURES

24.01 GENERAL PROVISIONS

24.01.01 Purpose

The purpose of this Code is to provide rules of procedure to govern civil lawsuits and the prosecution of offenses in Tribal Court, to support and expedite the truth-finding mission at trial and to guarantee defendants those rights deemed essential to an accurate determination of guilt. These rules shall be construed to secure simplicity in procedure, fairness in judicial administration, and the elimination of unjustifiable expense and delay. The rules are to be in keeping with the spirit and plain meaning of the Tribal Constitution of the Nisqually Indian Tribe.

24.01.02 Severability

If any part of this Code or its application to any person or circumstance is held to be invalid, the remainder of this title or its application to other persons or circumstances is not affected.

24.01.03 Sovereign Immunity

The sovereign immunity of the Nisqually Indian Tribe, its Tribal Council, law enforcement officers, court personnel, or other agencies or officers is in no manner waived by this title.

24.01.04 Repealer

This code is to be interpreted to supersede and replace any conflicting provisions of all prior civil procedures codes and laws and the Nisqually Indian Tribe.

24.01.05 Time Computation

In computing any period of time prescribed or allowed by this ordinance, or by rules of the court the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or Tribal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and Tribal holidays shall not be counted in the computation.

24.01.06 “Reservation” Defined

For the purposes of this code unless otherwise expressly provided, the term “reservation”, “Nisqually reservation”, or “tribal land” shall mean all lands within the exterior boundaries of the Nisqually Indian Reservation and all other lands over which the tribal court has territorial jurisdiction, limited only by federal law and the Constitution of the Nisqually Indian Tribe.

24.01.07 “Native American” Defined

For the purposes of this code unless otherwise expressly provided, the term “Native American”, or “Indian” shall mean any person who is a member of a federally recognized Indian Tribe, band, pueblo, Indian community or an Alaska Native corporation.

24.02 ESTABLISHMENT OF COURT

24.02.01 Establishment of Court

- (a) The judicial power of the Nisqually Indian Tribe shall be vested in the Nisqually Tribal Court.
- (b) The judicial power shall extend to all cases and controversies in law and equity arising under the laws of the Nisqually Indian Tribe.

ANNOTATIONS

Resolution 19-1991 dated March 23, 1991 reaffirms the Separation of Powers doctrine and limits Tribal Council interference in Tribal Court business to situations that the Tribal Council, as a whole, deem necessary to address. Resolution 19-1991 states that the Tribal Council, as a body can review and take action to facilitate change in the Tribe’s jurisprudence system in accordance with applicable law and the Tribe’s Constitution. However, individual council members are not to manipulate or otherwise influence or impede Tribal Court judges.

24.03 JURISDICTION

24.03.01 Nisqually Tribal Court Jurisdiction

The jurisdiction of the Tribal Court over persons and territory is limited only by federal law and the Constitution of the Nisqually Indian Tribe. The Nisqually Tribal Court’s jurisdiction shall include, but not be limited to:

- (a) All offenses proscribed by tribal ordinance committed by a Native American within the Nisqually Reservation;
- (b) All offenses proscribed by tribal ordinance or regulation governing the exercise of treaty hunting and fishing rights, which offenses are committed by enrolled members of any federally recognized Indian Tribe within areas encompassing the Nisqually Tribe’s usual and accustomed fishing grounds and ceded lands;

- (c) All civil actions at law or in equity, involving any person or entity and arising under the Constitution, By-laws, laws and regulations of the Nisqually Tribe, or to which a Native American or Native American owned property is a party;
- (d) All Reservation exclusion proceedings; and
- (e) All tort claims brought consistent with the Tribal Tort Claims Act.
- (f) All petitions for the appointment of guardians for elders, incompetent persons and others.
- (g) All other matters which the Tribal Council may lawfully place within the jurisdiction of the Court.

24.03.02 Consent to Jurisdiction

Any person entering the Nisqually Reservation shall be deemed thereby to consent to the laws of the Nisqually Tribal Community and the jurisdiction of the Tribal Court, to consent to the Court's exercise of jurisdiction over his or her person and property in legal actions arising pursuant to this ordinance, and to consent to service of summons or process by registered mail at his or her last known address.

24.03.03 Tribal and State Concurrent Jurisdiction

- (a) The Tribal Court's jurisdiction shall be concurrent, where provided by tribal and federal law, with respect to any offense or civil cause of action over which the state may have lawful jurisdiction.
- (b) The Tribal Court's jurisdiction shall exist for violations that are declined by federal authorities as a lesser offense.

24.04 APPOINTMENT OF JUDGES

24.04.01 Number of Judges

The Nisqually Tribal Court shall consist of one (1) Chief Judge, and as many associate judges and the Nisqually Tribal Council shall appoint.

24.04.02 Appointment

Each judge shall be appointed by resolution of the Nisqually Tribal Council.

24.04.03 Eligibility

The Judge of the Nisqually Tribal Court shall be a person who is over the age of twenty-one (21) years and who has never been convicted of a felony, or within one year past, a misdemeanor.

24.04.04 Term of Office

Each judge shall hold office for a period of four years unless sooner removed for cause, but shall be eligible for reappointment. In the event of a vacancy, the Tribal Council may appoint a judge to serve during the remainder of the unexpired term.

24.04.05 Conflict of Interest

No judge shall be qualified to act in any case wherein he has any direct interest or wherein any relative by blood or marriage, in the fifth degree or closer (as defined by the Civil Law System) is a party. In cases of conflict or exceptional complexity, the Chief Judge may appoint a Judge Pro Tem.

24.04.06 Participation in Court Program

The Tribal Council may, by resolution, choose to participate in a Court program, including an Appellate Court Program, other than or in addition to the Nisqually Tribal Court.

24.05 REMOVAL OF JUDGES

24.05.01 Petition for Removal

(a) A written petition signed by at least twenty (20) enrolled tribal members may request the removal of a tribal judge. Such petition shall set out with specificity the grounds on which it is based.

(b) Any judge of the Nisqually Tribal Court may be suspended or removed for good cause by a majority vote of the Tribal Council present at a meeting called for that purpose and at which a quorum of tribal council members is present. The Tribal Council's disagreement with a judge's decisions shall not constitute good cause for removal.

24.05.02 Notice

Upon receipt of a valid petition, the Tribal Council shall cause to be delivered to the judge a written statement setting forth the proposed action, the reasons for the proposed action, and the time and location of the meeting of the Tribal Council at which the judge may appear to respond to the charges against him or her.

24.05.03 Meeting to Consider Removal

(a) The Tribal Council meeting shall take place no sooner than five days and no later than twenty (20) days after notice is delivered to the Judge.

(b) At the meeting, the Judge shall be given adequate opportunity to answer any and all charges. Any vacancies shall be filled as provided in section 24.04 of this Title.

24.06 PROFESSIONAL ATTORNEY OR SPOKESPERSON

24.06.01 Representation by Attorney or Spokesperson

A person appearing in the Nisqually Tribal Court may, at his or her own expense, be represented by an attorney or spokesperson, provided that such representation shall first meet standards for admission to practice before the court.

24.06.02 Admission to Tribal Court

The court shall prescribe rules setting out the conditions and standards for admission to practice of a professional attorney or spokesperson before the court.

24.06.03 Appointment of Tribal Representative

The trial judge may appoint any member of the Tribe or other qualified person to act as prosecutor or representative of the Tribe when the Tribe has no other available representative.

24.06.04 Court Appointment of Representative

The judge may appoint a spokesperson to assist any party if the judge determines that such appointment is necessary to protect the person's rights.

24.06.05 Disbarment of Attorneys

- (a) Any attorney or spokesperson may be disbarred for good cause by action of a majority of the judges of the tribal court acting as a body.
- (b) The judges shall prescribe by rule the grounds for disbarment.

24.07 COURT CLERKS

24.07.01 Appointment of Court Clerk

The Tribal Court Clerk shall be hired in accordance with the Tribe's personnel policies and procedures and shall be supervised by the Court Administrator.

24.07.02 Duties

- (a) It shall be the duty of the clerk to keep the records of the Court, to attend and keep a written record of all court proceedings, and screen all criminal complaints as provided herein, and to perform such other duties as the Chief Judge may specify.
- (b) If available, the clerk shall assist tribal police and members of the Nisqually Indian Community in the filling out of form complaints, subpoenas, warrants, oaths and any other documents incidental to the functioning of the court.

(c) The clerk shall further administer oaths of witnesses, collect all fines and bail forfeitures paid into the court, to pay out all fees authorized by these regulations, and to make an accounting thereof to the Tribal Council.

(d) The clerk shall be bonded in an amount established by the Tribal Council.

24.07.03 Requirement to Keep Records

(a) The Nisqually Tribal Court shall be required to keep, for inspection by duly qualified officials, a record of all proceedings of the court, which record shall reflect the title of the case, the names of the parties, the substance of the trial, by whom conducted, the findings of the court and the judgment, together with any other facts or circumstances deemed of importance to the case.

(b) Unless otherwise ordered by the Judge, such records shall be available to enrolled members of the Tribe on payment of reasonable search and duplication fees.

24.07.04 Tape Recording of Trials

(a) The clerk shall tape record verbatim all trials conducted by the Nisqually Tribal Court.

(b) If an appeal is filed by either party to a case, the recording shall be transmitted to the Court of Appeals along with such other documents as requested by the Court or parties.

(c) If no appeal is filed as provided by this ordinance, the clerk shall erase the recording five years after the final decision in the case.

24.07.05 Filing Fees

The court clerk shall collect filing fees and other miscellaneous court fees as approved by the Tribal Council and posted in the Tribal Court.

24.07.06 Accounting for Tribal Court Fees

The Nisqually Tribal Court Clerk shall account for all tribal court fees collected in accordance with this Title.

24.07.07 Waiver of Fees

A judge of the Tribal Court may order that payment of the fees set forth in this Section be waived if the judge finds that a person is unable to pay a fee otherwise required to reimburse the Tribe for certain costs under this Section. The person may file with the court an Affidavit of Indigency setting forth his or her financial status, on a form provided by the clerk. Upon the execution of the Affidavit of Indigency, the clerk will proceed as if the fee has been paid, and will notify a Tribal Court judge of the filing within five working days. The judge will review the Affidavit and either grant the waiver, waive a portion of the fee, or order that the full fee be paid. The judge's decision shall be based on the information contained in the Affidavit.

24.08 COURT PROCEDURES

24.08.01 Court Sessions

- (a) Sessions of the Nisqually Tribal Court for the trial of cases shall be called by the Chief Judge and presided over by him or her, or by one (1) of the Judges selected by the Chief Judge for a particular case.
- (b) The time and place of court sessions, and all other details of judicial procedure not prescribed by this code shall be governed by Rules of Court approved by the Nisqually Tribal Council. It shall be the duty of the judges of the Tribal Court to recommend to the Committee rules and amendments thereto which promote fairness, simplicity and efficiency in the operation of the Court.

24.08.02 Court Rules

When the Tribal Court determines that the complexity of the action before the Court requires more detailed rules of civil procedure than are provided by this Title, the Court may develop court rules to clarify the expected procedure.

24.08.03 Contempt of Court

- (a) Any person who engages in any of the following activities shall be considered to be in contempt of court:
 - (i) disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court or the Court of Appeals, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
 - (ii) breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court or the Court of Appeals;
 - (iii) purposely disobeying or refusing any lawful process or other mandate of Tribal Court or the Court of Appeals;
 - (iv) unlawfully refusing to be sworn as a witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;
 - (v) purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
 - (vi) purposely failing to obey any mandate, process, or notice relative to serving as a juror.
- (b) If a judge determines that a person is in contempt of court, the judge may impose a fine payable to the court or other appropriate sanction, provided that imprisonment may only be ordered upon a charge of criminal contempt of court brought by the Tribal Prosecutor.

24.09 JURIES

24.09.01 Demand for Jury Trial

- (a) In the trial of any offense for which imprisonment may be penalty, a defendant may demand a trial by jury.
- (b) Jury demands may be made orally or in writing and shall be submitted to the Court not later than ten (10) days before trial.
- (c) In those cases where a jury is not demanded, trial may be to the judge alone.

24.09.02 Jury List

A list of eligible jurors shall be prepared by the Nisqually Tribal Council or by the Enrollment Clerk if the Committee fails to do so.

24.09.03 Eligibility of Jurors

Any qualified voter of the Nisqually Indian Community and any Indian or non-Indian resident of the reservation over the age of eighteen (18), who meets eligibility requirements prescribed by the Rules of the Court, shall be eligible for jury duty.

24.09.04 Excusal from Jury Duty

A person may decline to serve as a juror only by demonstrating to the court clerk that he or she has good cause to be excused, as provided by the Rules of Court. Such demonstration is subject to review by the Judge.

24.09.05 Jury Selection

In any case, a jury shall consist of six (6) persons selected by the trial judge at random from the list of eligible jurors. In appropriate cases the trial judge may select an alternate juror.

24.09.06 Challenges

- (a) Each party shall have the right to challenge an unlimited number of jurors on the basis of partiality or inability to judge the case fairly.
- (b) The judge shall determine whether or not cause exists to dismiss a juror.
- (c) When there are sufficient jurors available, any party to the case may challenge not more than three (3) members of the jury panel so chosen, without the establishment of cause.

24.09.07 Compensation for Jurors

Each person summoned for jury duty shall be paid the sum specified by the Rules of Court for each day of service plus mileage for the juror's transportation costs to and from court.

24.10 WITNESSES

24.10.01 Compelling Witnesses to Appear

- (a) Any party to a lawsuit or other court proceeding shall have the right to compel witnesses to appear in court and testify concerning the matter.
- (b) Upon request of any party to a case or upon the Tribal Court's own initiative, the Tribal Court shall issue a subpoena to compel the testimony of witnesses, or the production of books, records, documents, or any other physical evidence which is relevant and necessary to the determination of the case, and where the production of which is not an undue burden on the person subpoenaed.
- (c) Such subpoenas shall be signed by the judge or by the court clerk if the judge is not available or has delegated the signing to the court clerk.

24.10.02 Contents of a Subpoena

A subpoena shall contain the name of the person subpoenaed or a description of the evidence subpoenaed together with the name of the person who has custody of such evidence, the title of the court proceeding, the time and place where the witness is to appear or the evidence is to be produced, and the signature of the person issuing the subpoena.

24.10.03 Service of a Subpoena

- (a) Any person over the age of eighteen (18), who is not a party to the proceeding may serve a subpoena.
- (b) A party may request the court clerk to appoint a person to serve the subpoena, or request that a tribal police officer serve the subpoena. Any party making such a request shall first deposit the court fee with the court clerk to cover the cost of service.
- (c) Service of a subpoena shall be made in the same manner as personal service of process.

24.10.04 Child Witnesses

Upon a specific finding by the court of potential trauma to a child witness, the court may order that the alleged child witness be examined on video tape in the physical presence of only the judge and the counsel for the parties in a room separate from the courtroom. A video tape made in accordance with this section shall be admissible as evidence in the trial.

24.10.05 Witness Fees

Each witness answering a subpoena issued on behalf of the Nisqually Tribe shall be entitled to a fee established in the Rules of Court for each day his or her services are required in Court.

24.10.06 Failure to Answer a Subpoena

In the absence of justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be found in contempt of court.

24.11 SERVICE OF PROCESS

24.11.01 Personal Service Within the Nisqually Reservation

(a) Personal service of the summons and complaint within the reservation shall be made in the following manner:

(i) By delivering a copy personally to the defendant or leaving it at his or her residence with any person who is eighteen years of age or older and resides therein; or

(ii) By delivering a copy to the defendant's agent or other person authorized by appointment or law to accept such service;

(iii) If the defendant is a corporation, partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process.

(iv) Upon the Nisqually Tribe by delivering a copy of the summons and complaint to the Nisqually Tribal Chairman or the Nisqually Tribal Secretary with a copy to the Office of the Tribal Attorney; provided, however, that this section shall not be construed as a waiver of the sovereign immunity of the Nisqually Tribe, its subdivisions, agents, agencies, enterprises, or officers.

(b) If the complaint is against a minor under the age of sixteen (16) years, service shall be made to the minor and also to his or her parent, guardian or custodian if one can be located.

(c) If the complaint is against a person for whom a guardian has been appointed for any cause, service shall be made to both the person and the guardian.

(d) Whenever any domestic or foreign corporation, which has been doing business on the reservation, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporations, service of process upon such corporation may be made upon the receiver thereof.

(e) Proof of service may be made by sworn affidavit of any person eighteen (18) years of age or older stating that he or she has complied fully with the requirements of this section and describing the specific manner of service.

24.11.02 Personal Service Outside the Nisqually Reservation

Personal service of the summons and complaint or other process may be made upon any party outside the Nisqually Reservation. If service is upon a resident of the Nisqually Reservation or upon a person who has submitted to the jurisdiction of the tribal court, it shall have the force and effect of personal service within the Reservation; otherwise, it shall have the force and effect of service by publication. The summons upon the party outside the Reservation shall contain the same information and be served in the same manner as a summons within the Reservation, except that it shall require the party to appear and answer within sixty (60) days after service.

24.11.03 Personal Service Outside the Nisqually Reservation—Acts Submitting Person to Jurisdiction of the Court

(a) Any person, whether or not a resident of the reservation, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the tribal court as to any cause of action arising from the doing of any of said acts:

- (i) The transaction of any business within the reservation;
- (ii) The commission of a tortious act within the reservation;
- (iii) The ownership, use, or possession of any property whether real or personal situated within the reservation;
- (iv) Contracting to insure any person, property or risk located within the reservation at the time of contracting;
- (v) The act of sexual intercourse within the reservation with respect to which a child may have been conceived;
- (vi) Living in a marital relationship within the reservation notwithstanding subsequent departure from this reservation, as to all proceedings related to the termination of the relationship, so long as the petitioning party has continued to reside on the reservation.

(b) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.

(c) Personal service outside the reservation shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the reservation.

(d) Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.

24.11.04 Service of Summons by Publication – When Authorized

(a) When the defendant cannot be found within the reservation, and upon the filing of an affidavit of the plaintiff, his agent, or attorney, with the court clerk, stating that he or she believes that the defendant is not a resident of the reservation, or cannot be found therein, and that he has deposited a copy of the summons and complaint in the post office, directed to the defendant at his last known address, unless it is stated in the affidavit that no address is known to the affiant, and stating the existence of one of the

cases hereinafter specified, the service may be made by publication of summons in any one of the following cases:

- (i) When the defendant is a foreign corporation, and has property within the reservation;
 - (ii) When the defendant, being a resident of the reservation, has departed therefrom, or keeps himself concealed therein, with the intent to defraud creditors or to avoid service of summons;
 - (iii) When the defendant is not a resident of the reservation, but has property therein and the court has jurisdiction of the subject of the action;
 - (iv) When the subject of the action is real or personal property located within the reservation, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;
 - (v) When the action is to foreclose, satisfy or redeem from a mortgage, or to enforce a lien of any kind on real estate in the reservation or satisfy or redeem from the same;
 - (vi) When the action is against any corporation
 - (vii) When the action is brought to determine conflicting claims to property located within the reservation.
- (b) Service made by publication shall not alone be taken and held to give the court jurisdiction over the person of the defendant. By such service, the court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property which properly forms the basis of jurisdiction of the court. If the defendant appears in a suit where service was made by publication, the court shall have jurisdiction over his person. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the court.
- (c) Proof of service by publication may be made by affidavit of any person eighteen (18) years of age or older stating that he or she has complied fully with the requirements of this section. The affidavit shall state the dates of publication and shall be accompanied by a printed copy of the publication.

24.11.05 Manner of Publication and Form of Summons

The publication shall be made in a newspaper of general circulation in Thurston County, State of Washington once a week for six consecutive weeks. The publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons shall contain the date of first publication, and shall require the defendant to appear and answer the complaint within sixty (60) days from the date of the first publication of the summons. The summons shall also contain a brief statement of the object of the action.

24.12 ENFORCEMENT OF JUDGMENTS

24.12.01 Recognition of Foreign Orders

The Nisqually Tribal Court is authorized to recognize valid foreign court orders provided the Tribal Court ensures the parties to any order were afforded due process and that jurisdiction existed over the parties and the subject matter.

24.12.02 Enforcement of Judgments

The Nisqually Tribal Court may utilize appropriate enforcement techniques, both before and after entry of judgments, to ensure collection of unpaid judgments including appropriation of funds due judgment debtor.

CHAPTER II - RULES OF CIVIL PROCEDURE

24.13 STATUTE OF LIMITATIONS

24.13.01 Statute of Limitations

(a) A civil lawsuit in Tribal Court can only be commenced within the time periods provided in this section after the cause of action has accrued:

(i) Within ten years:

(A) For actions for the recovery of real property, or for recovery of the possession thereof; and no action shall be maintained for such recovery unless it appears that the plaintiff, his or her ancestor, predecessor or grantor was seized or possessed of the real property in question within ten years before the commencement of the action.

(B) For an action upon a judgment rendered or recognized by the Nisqually Tribal Court.

(ii) Within five years:

(A) An action upon a written contract, or a liability express or implied arising out of a written agreement.

(B) An action upon an account receivable incurred in the ordinary course of business.

(C) An action for the rents and profits or for the use and occupation of real estate.

(D) An action against any person arising from such person having constructed, altered or repaired any improvement upon real property, or having performed or furnished any design, planning, surveying, architectural or construction or engineering services, or supervision or observation of construction, or administration of construction contracts for any construction, alteration, or repair of any improvement upon real property. The statute of limitations for such an action shall begin to run after substantial completion of construction, or after termination of the services whichever is later.

- (E) An action against a personal representative or trustee for breach of fiduciary duties.
- (iii) An action for relief not hereinbefore provided for, shall be commenced within three years after the cause of action shall have accrued.
- (b) For the purposes of computing the limitation periods set forth in subsection (a), there shall be excluded all periods during which:
 - (i) The complainant is under the age of eighteen (18) years or is incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings;
 - (ii) The complainant was not aware of the injury or breach, or would not have discovered the injury or breach using reasonable diligence;
 - (iii) The complainant was not aware that the injury or breach was caused by the action(s) of the defendant and could not have discovered so using reasonable diligence;
 - (iv) The defendant is absent from the jurisdiction of the Court or is concealed therein;
 - (v) The commencement of the action is stayed by injunction or statutory prohibition.

24.13.02 Tolling of Statute of Limitations

For the purposes of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed. If following filing, service is not made to all defendants within ninety (90) days of the date of filing, the action shall not be deemed commenced for purposes of tolling the statute of limitations.

24.14 INITIATING A CIVIL ACTION

24.14.01 Filing a Complaint

- (a) All civil actions shall be initiated by a signed, written complaint filed with the clerk of the Tribal Court. The person who has filed the complaint shall be known as the plaintiff in the lawsuit.
- (b) The complaint shall contain the following information:
 - (i) A description of the injury or breach the plaintiff is complaining of;
 - (ii) The name of the person(s) alleged to be responsible for the injury or breach, who shall be known as the defendant;
 - (iii) A statement of the relief the plaintiff is requesting.
 - (iv) The address to which future notices and pleadings should be sent to the plaintiff.

24.14.02 Summons

- (a) After the complaint has been filed, the Clerk shall issue a summons directing the defendant to answer the complaint within twenty (20) days of the time the defendant

receives the complaint and summons. The summons shall inform the defendant of the consequences of default.

(b) Within ninety (90) days after plaintiff files a civil complaint, plaintiff shall cause a copy of the complaint, together with the summons, to be served upon each defendant named in the complaint. Service of process shall be consistent with Chapter 24.11.

24.14.03 Amendment, Withdrawal or Dismissal of the Complaint

A plaintiff may amend, withdraw or dismiss the complaint without Court permission at any time before the defendant answers the complaint. Thereafter, the plaintiff must receive permission from the judge. The judge shall allow the plaintiff to amend, withdraw or dismiss the complaint if the defendant will not be prejudiced thereby.

24.14.04 Answering the Complaint

(a) The defendant must answer the complaint in writing, file the answer with the Court and serve a copy of the answer on the plaintiff within twenty (20) days from the date he or she is served with the complaint and summons.

(b) The answer shall contain the following:

(i) Notice that the defendant is appearing in the action and the address to which the defendant wants to receive all future notices and pleadings.

(ii) All denials and affirmative defenses the defendant intends to present to the Court.

(iii) Any counterclaims against the plaintiff which shall be governed by the same rules which apply to complaints.

(c) If the defendant does not file and serve an answer containing denials and/or affirmative defenses within the twenty day period, the plaintiff may request that the Court enter a default judgment against the defendant.

(d) Service of the answer shall be made in the same manner provided for the service of the summons and complaint.

24.14.05 Reply

(a) A plaintiff served with an answer containing a counter-claim shall file and serve an answer thereto within twenty (20) days after being served with the answer. Service of the reply shall be made in the same manner provided for service of the summons and complaint.

(b) If the plaintiff does not file and serve a reply containing denials and/or affirmative defenses to the counter claim within the twenty day period, the defendant may request that the Court enter a default judgment against the plaintiff.

24.14.06 Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

- (i) when any Title of the Nisqually Law and Order Code confers an unconditional right to intervene; or
 - (ii) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when the applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion under this subsection, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
- (c) A person desiring to intervene shall make such application by a motion stating the grounds therefor. The motion shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

24.15 PRETRIAL PROCEDURE

24.15.01 Preliminary Injunctions

- (a) A party to a civil suit may ask the judge for a pre-trial order (injunction) prohibiting or requiring particular action by another party until such time as the court reaches a final decision in the case. The order shall be granted if the requesting party shows that there is a good chance he or she will win the lawsuit and that he or she will suffer irreparable loss or injury if the injunction is not issued.
- (b) Unless otherwise stated in the injunction, a pre-trial injunction shall remain in effect until a final judgment has been issued by the court.
- (c) No pre-trial injunction shall be issued unless the party to be enjoined first has notice and an opportunity to be heard in court.
- (d) The judge may require that a party who request an injunction provide security for any loss or injury which may be suffered by a party who is wrongfully enjoined or restrained; provided, that the judge shall not require such security from the Nisqually Tribe or any of its branches.

24.15.02 Temporary Restraining Orders

- (a) A judge may issue a temporary restraining order prohibiting or requiring a particular action by a party without notice to the party being restrained when the party who requests such an order shows that he or she will suffer irreparable loss or injury if the order is not issued before the opposing party can be notified and heard, and that he or she made a reasonable attempt to notify the opposing party of the time when the request would be made.
- (b) A temporary restraining order shall be effective only for the time period specified in the order, and in no case for longer than fourteen (14) days.

24.15.03 Default

- (a) Failure of a party to file and serve a required answer or reply containing denials and/or affirmative defenses upon the party making the complaint or counter-claim within twenty (20) days after being served with the complaint or counter-claim shall be a default and shall provide grounds for a judgment against the party as asked for in the complaint or counter-claim.
- (b) No judgment of default shall be made unless the party seeking a default files a written motion for a default judgment and serves a copy of the motion on each opposing party in the same manner as a complaint may be served. The motion shall state the date, time and place at which the motion will be heard by the court which shall be no sooner than five (5) business days after receipt of service.
- (c) If the party against whom a default is sought files the required answer or reply at or before the time the motion is to be heard, no default judgment shall be granted and the matter shall proceed as though answered on time.
- (d) In granting a default judgment, the Judge may refuse to grant the relief requested if granting the relief would be contrary to tribal law or would be unjust. The judge may not grant the party greater relief on default than was requested in the complaint or counter-claim.

24.15.04 Discovery

- (a) Upon request of any party, the opposing party shall make available all information in his or her possession or control which will be used as evidence in the case, or which can reasonably be expected to lead to evidence.
- (b) Methods of discovery may include, but need not be limited to, written questions (interrogatories), oral examinations (depositions), requests for the names of witnesses, requests for admissions, physical inspection of property, requests to perform physical or scientific tests, and requests for documents. The party making the request for information shall be as clear and specific as possible in describing what he or she wants.
- (c) A party who receives a request for information under this section shall, within ten days of receiving the request, or such longer period of time as the Court may allow, respond either with the information, with an indication where and when the information will be available, or with a refusal to comply with the request. Failure to respond is grounds for a court order requiring a response.
- (d) A party may refuse to make information available if the information will not be used as evidence at trial and to do so would cause the responding party or a third party undue hardship or if the information is confidential or privileged. Privileged information includes attorney-client communications, spousal communications, communications with clergy, and doctor/therapist-patient communications, provided, that, the contents of the communication have not been revealed to a third party, provided further, that, a party may be entitled to require an opposing party to undergo a physical or mental examination when the party's physical or mental condition is relevant to the determination of the case.
- (e) If the parties disagree about whether the responding party is required to release information, the judge shall make the determination. The judge may place conditions on

the release of information in order to protect confidential material, prevent unreasonable burden or expense to a party, or otherwise ensure fairness to all parties.

24.15.05 Pre-Trial Conference

(a) In the interest of saving time, simplifying issues and avoiding unnecessary litigation, the judge may, on his or her own motion, or on the motion of any party, schedule one or more pre-trial conferences with all parties to a case. In any case determined by the judge to be complex, at least one pre-trial conference shall be held after the completion of discovery, and early enough to aid the parties in planning for trial.

(b) The pre-trial conference shall be held in an informal setting and shall be conducted without formal procedures. The parties and the judge shall discuss areas in which the parties are in agreement and areas where they disagree. The purpose of the discussion shall include the following:

- (i) To identify and dispose of issues which may be resolved without trial;
- (ii) To narrow and focus issues of law which remain to be decided and to identify central facts which are still in dispute;
- (iii) To limit the number of witnesses and the evidence which will be presented so that testimony and other evidence is not repetitious or irrelevant; and
- (iv) To avoid surprise at trial.

(c) To accomplish the above purposes, all parties to a lawsuit shall, at the pre-trial conference after discovery, fully disclose:

- (i) The names and addresses of all witnesses they expect to present at trial, and the basic information to which they expect the witness to testify;
- (ii) All documents they expect to introduce as evidence, and the basic information they intend to prove with those documents; and
- (iii) All objects which they intend to introduce as evidence and the basic information they intend to prove with those objects.

(d) No party shall be permitted to use the testimony of any witness or introduce as evidence any document or object at trial unless the party discloses the witness, document, or object at the pre-trial conference, provided, that, a party may use an undisclosed witness, document or object if they party proves that, at the time of the pre-trial conference, the party was unaware of the existence or nature of the witness, document or object and could not, with reasonable effort, have discovered it. Such undisclosed evidence must be revealed to the judge and the opposing party before it is offered at trial.

(e) No offer of settlement or other statement which is made by a party during a pre-trial conference may be used as evidence against that party if a settlement is not achieved. Agreements reached as a result of a pre-trial conference shall be put in writing and signed by all parties. Such agreements shall be made part of the final decision issued by the judge.

24.16 MOTIONS

24.16.01 Timing of Motions

- (a) Motions to dismiss a lawsuit because the court lacks jurisdiction may be brought at any time.
- (b) Motions to dismiss a lawsuit because the plaintiff has failed to state a claim upon which relief may be granted may be brought at any time and shall be treated as a motion for summary judgment.
- (c) Motions to dismiss a lawsuit because of improper venue, insufficiency of process or insufficiency of service of process and motions to determine the procedures to be used at trial must be made at least five (5) business days prior to the commencement of the trial or the defense shall be deemed waived. The judge may deny a motion made under this subsection which could and should have been made earlier if it appears that the moving party knew or should have known earlier about the basis for the motion and has raised it late because of negligence or an intent to harass the other party.
- (d) Motions for disqualification of a judge must be made prior to the closing arguments of the parties at trial.

24.16.02 Notice of Motion

- (a) All motions not made during and as a consequence of the events at a trial or other hearing shall be made in writing and notice of the motion shall be provided to all other parties at least five (5) days prior to any other motion being heard. Notice of a motion for summary judgment must be provided to the other parties at least ten (10) days prior to the motion being heard.
- (b) A Notice of Motion required by this section shall notify the other parties of the nature and basis of the motion and the date, time and place for hearing.

24.16.03 Motions for Disqualification

- (a) A judge shall disqualify himself or herself from a case on the motion of any party or on the judge's own motion if the Judge determines that he or she will not be able to hear the case in a fair and impartial manner.
- (b) No judge shall be qualified to act in a case wherein he or she has any direct interest or wherein any relative by blood or marriage, in the third degree or closer is a party or an attorney for a party.

24.16.04 Motions for Summary Judgment

- (a) A party seeking to recover on a claim or counter-claim may, at any time after the expiration of the time period in which the opposing party is required to respond or reply to the claim, move for a summary judgment in the party's favor upon all or any part thereof.
- (b) A party against whom a claim or counter-claim is sought may, at any time move for a summary judgment in the party's favor as to all or any part thereof.

(c) The judge shall grant a summary judgment if the pleadings and other information presented show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

24.17 TRIAL PROCEDURE

24.17.01 Order of Trial

(a) Presentations in civil trials shall be made in the following order unless otherwise agreed by the parties and the judge:

- (i) Opening statements by the parties or their counsel;
- (ii) Presentation of the plaintiff's witnesses and evidence and cross-examination of the plaintiff's witnesses by the defendant;
- (iii) Presentation of the defendant's witnesses and evidence and cross-examination of the defendant's witness by the plaintiff;
- (iv) The parties may then offer rebutting testimony only, except that the court may, in the interest of justice, permit the introduction of new evidence.
- (v) Final arguments by both parties.

(b) At the close of a jury trial, the judge shall instruct the jury as to the relevant law, the burden of proof, and any other issues of law that the judge believes will help the jury to reach a just verdict, and the jury shall retire until such time as they reach a decision. When the jury has reached its decision the court shall reconvene and the foreman of the jury shall read the decision.

(c) At the close of a non-jury trial, the judge may announce a final decision or may take the matter under submission and issue a written decision at a later time. All decisions shall be announced within thirty days after the end of trial.

24.17.02 Rules of Evidence

(a) This section shall govern the admissibility and use of evidence in civil matters.

(b) General Rules:

- (i) Where there is more than one kind of evidence about the same subject, the judge or jury shall give each item of evidence the importance (weight) which, according to the judge or jury's common sense and sense of fairness, that particular type of evidence deserves. For example, in oral testimony, the testimony of persons who testify from their personal knowledge, such as first-hand observation of, or participation in, the event described shall be given more weight than the testimony of persons who only have second-hand knowledge of the event.
- (ii) Evidence admitted in the court must be related either to the issues before the court or to the weight and credibility which should be given to other evidence. When questioned by the judge or another party as to why certain evidence should be allowed, the party who wishes to present the evidence shall state the issue which he or she will use the evidence to resolve and explain how the evidence is relevant to the issue.
- (iii) When the relevance or reliability of evidence is challenged, the judge shall decide whether or not the evidence should be admitted and explain the decision.

(c) Witness Testimony

- (i) Before testifying, every witness shall first state in open court that he or she will testify truthfully. All witnesses shall be administered an oath by the court as follows: "Do you swear (or affirm) to tell the truth in the matter now before you?"
- (ii) When questioning a witness, the judge and the parties shall not ask questions in such a way as to suggest an answer, unless the witness was called by the opposing party, or is clearly hostile to the person asking questions.
- (iii) The judge shall protect the witnesses from harassment or unnecessary repetitious or irrelevant questioning.
- (iv) During the questioning of a witness, the judge may exclude from the courtroom any witnesses who have not yet testified, if this seems necessary to ensure that all witnesses will give truthful testimony. At the request of any party, such witnesses shall be excluded.
- (v) The judge may call or question any witness on his or her own initiative.

(d) Written Testimony and Documentary Evidence

- (i) Relevant testimony of a witness may be presented in sworn written form if and only if:
 - (A) the witness is unable to appear in person to testify; or
 - (B) the written testimony is not contradicted by other parties; or
 - (C) the written testimony is offered to support a motion or an uncontested request for relief; or
 - (D) the written testimony contradicts oral testimony already given by the same witness.
- (ii) Copies of written records, photographs, and other documentary evidence may be presented as long as there is a reasonably reliable way to identify the items, their authenticity and the methods used to prepare them.
- (iii) The judge may take notice of facts which are a matter of official public record, even if no party introduces them as evidence.

24.17.03 Burden of Proof

- (a) Unless otherwise provided by Tribal law, the burden of proving a civil claim shall be on the party making the claim.
- (b) The standard of proof in a civil action shall be by a preponderance of the evidence.
- (c) A civil jury verdict must be based upon the agreement of at least 5 of the 6 jurors.

24.17.04 Judgments

- (a) A judgment is a final order of the court which disposes of a claim in whole or in part. The judge may announce a judgment orally at a hearing in open court before the parties, or in writing, at the time of hearing or after the hearing, but in no case more than thirty (30) days after the end of the trial.

(b) A judgment becomes final when it has been recorded in the Docket Book by the Court Clerk. The court shall establish, by Rule of Court, the length of time after issuance of an order within which the Clerk must record the Order.

24.18 POST TRIAL PROCEDURES

24.18.01 Proceedings After Judgment

(a) No later than ten (10) days after judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, clarification, vacation, or modification of the judgment. Such a request shall be in writing, a copy of which shall be provided to all other parties.

(b) The judge may grant a new hearing or reconsider any change in the judgment if he or she finds at least one of the following to be true:

(i) The original judgment was based on or reached as a result of fraud or mistake of law;

(ii) There is newly discovered evidence which probably would have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing of the case;

(iii) The court did not have jurisdiction over the parties or the subject matter.

(c) No later than fifteen (15) days after the judgment is final or after a motion made pursuant to subsection (a) is denied, a party may appeal an adverse judgment as provided in the rules for appellate procedure.

(d) No civil judgment shall be enforced sooner than fifteen (15) days after the judgment is entered in the Docket Book.

24.18.02 Costs

(a) Upon judgment, the judge shall order the losing party to pay to the winning party the costs of the lawsuit unless applicable law provides otherwise or the judge determines that such an order would be unjust. Costs shall not be imposed on the Tribe or any branch of the Tribe unless specifically permitted by an applicable law or agreement.

(b) Costs shall include civil filing fees, any costs for delivery documents required by law to be delivered, postage for court notice sent to parties and fees and expenses paid to witnesses and jurors, but shall not include attorney fees unless tribal law so provides in a particular type of case.

(c) Notwithstanding subsection (2), the court may order a plaintiff to pay the attorney fees of the defendant if the court determines that the lawsuit was frivolous or was filed with the intent to intimidate and/or harass the opposing party.

24.18.03 Request for Appeal

(a) Appeals from a decision of the Tribal Trial Court shall be made by following the procedures in the Chapter IV of this Title and by posting with the court any required filing fee.

(b) Pending appeal, the trial judge may also require that the appellant post a bond satisfactory to cover the cost of the appeal. Said bond shall not exceed one thousand dollars (\$1,000) and shall be returned to the appellant upon termination of the appeal, unless otherwise ordered by the court.

(c) The Tribal Court for good cause shown may waive entirely or in part either or both the filing fee or bond provided for in this section.

24.18.04 Stay of Trial Court Judgment

In any case where a party has filed a timely notice of appeal, the Trial Court may stay the judgment, and execution in such a case shall not be carried out unless and until final decision is made by the Court of Appeals.

24.19 MEDIATION OF DISPUTES

24.19.01 Request for Mediation

(a) At any time thereafter prior to trial, any party may request that a mediation hearing be held.

(b) The request shall be in the form of a motion to the court and shall include a proposed mediator for the hearing.

(c) The Tribal Judge shall allow a mediation hearing to be held if he or she finds that a mediator is available, that the parties are willing to attempt to resolve the dispute by informal means, and that the public interest will not be harmed by an informal resolution.

24.19.02 Mediator

(a) The court shall appoint a mediator to preside over the mediation hearing. A mediator must be over eighteen (18) years of age and must be able to preside over the mediation in an impartial manner. Preference should be given to Tribal elders or other members of the tribal community who have knowledge of informal dispute resolution procedures.

(b) The court shall take into consideration the views of the parties in selecting a mediator for the hearing.

24.19.03 Time of Hearing

The date and time of the mediation hearing shall be set by the mediator after consultation with the parties. The mediation hearing must be held prior to the date set for trial.

24.19.04 Hearing

(a) The plaintiff, the defendant and all other parties necessary for resolution of the matter shall be allowed to attend the mediation hearing. No person shall be compelled involuntarily to participate in the hearing.

- (b) All persons involved in the mediation hearing shall be allowed to speak at the hearing and may present any relevant evidence.
- (c) The mediator shall be responsible for keeping order during the hearing and shall determine if any informal resolution can be reached.

24.19.05 Results of Hearing

- (a) The mediator shall present the results of the mediation hearing to the court at the time of trial or at any time prior to trial.
- (b) If, after questioning the parties, the judge is satisfied that an informal resolution of the dispute has been reached he or she shall enter the agreement as an order of the Court.
- (c) If an agreement was not reached at the hearing the court shall proceed with trial. Anything spoken by a party or his or her counsel at the mediation hearing or the results thereof may not be used as evidence at the time of trial without the party's consent.

CHAPTER III - RULES OF CRIMINAL PROCEDURE

24.20 GENERAL RULES – CRIMINAL PROCEDURE

24.20.01 Statute of Limitations

No complaint shall be filed charging the commission of any criminal offense unless the offense charged was committed within the period of two (2) years prior to the date of the complaint, except, there shall be no time limit for filing complaints based on any sexual offense.

24.20.02 Tolling of Statute of Limitations

If the person accused of a criminal offense intentionally absents himself or herself from the jurisdiction of the Tribal Court, the time within which filing of the complaint is to be made is tolled for the duration of the time that the individual absents himself or herself from the jurisdiction of the court.

24.20.03 Definitions

- (a) Arraignment - A hearing at which the accused is brought before the Tribal Court, informed of the charge and his or her civil rights, given an opportunity to enter a plea, and where bail is set.
- (b) Arrest - The taking of a person into police custody and possibly held to answer for a criminal offense.
- (c) Complaint - A written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense at a particular time and location.
- (d) Contraband - All cigarettes and other items held for sales prohibited by tribal law.

(e) Controlled Substance - A drug or substance that has a stimulant or depressant effect on the central nervous system, or is an hallucinogenic substance, and which commonly becomes addictive after prolonged use. Examples of controlled substances include cocaine, heroin, marijuana, mescaline, opium, LSD and inhalants. Peyote is not considered controlled substances under this Code when used in connection with traditional Native American religious ceremonies.

(f) Criminal Complaint - A written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense at a particular time and location.

(g) Home Detention - A program of confinement and supervision that restricts the defendant to his or her place of residence permanently or during specified hours, and enforced by appropriate means of surveillance.

(h) Inhalant - Any solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors which is intentionally smelled or inhaled for the purpose of inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, paralysis, stupefaction, dulling of the senses of the nervous system, or in any manner changing, distorting or disturbing the audio, visual or mental processes.

(i) Probable Cause - When an apparent set of facts are found to exist which would cause a prudent and cautious person to believe that the suspect committed a particular offense or that evidence of a crime would be found on the premise or person to be searched.

(j) Search Warrant - A written order signed by the Tribal Judge or Tribal Judicial Officer, and directed to a Tribal Law Enforcement Officer ordering the Officer to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched, shall describe the items to be seized, and it shall specify the time the warrant is in effect.

(k) Vehicle - Any conveyance capable of movement. The term vehicle includes other conveyances such as tractors, wagons and sleds. It shall not include mobile homes which are secured on a foundation.

24.20.04 Assistance from Tribal, State and Federal Agencies

The Tribal Court may seek assistance from employees of the Bureau of Indian Affairs, State Department of Social and Health Services, and any other tribal, state, or federal agency necessary in the presentation of facts in a case and the determination of proper treatment of individual offenders.

24.21 STARTING THE CRIMINAL PROCESS

24.21.01 Complaint

(a) Defined - All criminal prosecutions for violation of the Tribal Code shall be initiated by complaint. A complaint is a written statement sworn to by the complaining

witness and charging that a named individual has committed a particular criminal offense at a particular time and location.

(b) Complaints shall contain:

- (i) The signature of the complaining witness or prosecutor sworn to before the Tribal Chief Judge or an individual designated by the Tribal Chief Judge; and
- (ii) A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and
- (iii) The name or description of the person alleged to have committed the offense; and
- (iv) The section of the Tribal Code allegedly violated; and
- (v) The alleged grounds for Tribal Court jurisdiction.

(c) The Tribal Court Clerk or other person authorized by the court shall be available to assist persons in drawing up complaints and screen them for sufficiency. Complaints shall then be stamped received, dated and submitted by the Court Clerk without unnecessary delay to the Tribal Judge or Tribal Judicial Officer to determine whether a warrant or summons should be issued.

(d) If the complaint, together with other written sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the Tribal Court shall issue a warrant pursuant to this Code instructing Tribal Law Enforcement Officers or other tribally authorized law enforcement officers to arrest the named accused or, in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the Tribal Court at a specified time and place to answer to the charge.

(e) When an accused has been arrested without a warrant, a complaint shall be filed immediately with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

(f) When an accused is charged with several violations, a separate complaint shall be made and filed for each violation.

24.21.02 Amendments to the Complaint

A complaint may be amended by the complaining witness or tribal prosecutor up to one week before trial without the defendant's consent, or at any time the defendant consents. The Tribal Court may refuse to allow an amendment requested by the complainant if the defendant objects and the court finds that allowing the amendment would cause an unfair prejudice to the defendant.

24.21.03 Dismissal or Withdrawal of Complaints

The Prosecutor may move to dismiss a case at any time. A complaining witness may withdraw a complaint, at any time prior to trial. Such withdrawal shall be in writing, filed with the court with a copy given to the Prosecutor. The Prosecutor may elect to prosecute

a complaint in spite of complainant's withdrawal, if he or she deems it necessary for the protection or welfare of the tribal community.

24.21.04 Arrest

(a) Defined - Arrest is the taking of a person into police custody to answer for a criminal offense.

(b) No Tribal Law Enforcement Officer shall arrest a person for a criminal offense defined by the Tribal Law and Order Code or by other applicable law or custom except when:

- (i) The officer has a warrant or a copy of an existing Tribal Court warrant commanding the arrest of such person; or
- (ii) The offense occurred in the presence of the arresting officer; or
- (iii) The officer has probable cause to believe that the person committed a felony offense; or
- (iv) The officer has probable cause to believe that the person committed one of the following non-felony crimes:
 - (A) Any non-felony crime involving physical harm or threats of harm to any minor or adult person or property or the unlawful taking of property;
 - (B) Any non-felony crime involving the use or possession of marijuana;
 - (C) Illegal possession of a dangerous weapon;
 - (D) Indecent exposure;
 - (E) Violation of a restraining order;
 - (F) Any act of domestic violence;
 - (G) Any criminal traffic offense as defined in Title 10, Subchapter III of the Nisqually Tribal Code.

24.21.05 Domestic Violence

(a) Law enforcement shall immediately arrest and take into custody any person whom the officer has probable cause to believe has committed an act of domestic violence. The victim of the domestic violence need not sign a complaint. Such person shall be charged with any appropriate crime and held without bail for a period not less than twenty-four (24) hours. No bail schedule shall be set until the "cooling off" period has expired.

(b) An officer is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest and take into custody the person he or she believes to have been the primary aggressor. In making this determination the officer shall consider (a) the intent of this Title to protect the victims of domestic violence; (b) the comparative extent of the injuries inflicted or the seriousness of the threats of physical injury; and (c) the history of domestic abuse between the persons involved.

24.21.06 Arrest Warrants

- (a) The Tribal Judge or Tribal Judicial Officer of the Tribal Court shall have authority to issue warrants to arrest. Arrest warrants shall only be issued if the Tribal Court finds there is probable cause to believe:
- (i) That an offense has been committed; and
 - (ii) That the person to be arrested committed the offense; and
 - (iii) That both elements (i) and (ii) above are supported by substantial evidence.
- (b) The arrest warrant shall contain the following information:
- (i) The name and address, if known, of the person to be arrested. If the name is unknown, then a description of the person to be arrested. This is often referred to as a “John Doe” warrant;
 - (ii) The date of issuance of the warrant; and
 - (iii) A description of the offense charged or the reason that the warrant is issued; and
 - (iv) The signature of the issuing Tribal Judge or Tribal Judicial Officer.
- (c) Arrest warrants may be executed only by a duly qualified and authorized law enforcement officer.

24.21.07 Bench Warrant

Every tribal judge has authority to issue a bench warrant when there is personal knowledge of probable cause to arrest.

24.21.08 Notification of Rights at Time of Arrest

- (a) Upon arrest, the accused shall be advised of the following:
- (i) That the suspect has the right to remain silent; and
 - (ii) That any statements made by the accused may be used against the accused in Tribal Court; and
 - (iii) The accused has the right to obtain counsel at the accused’s own expense; and
 - (iv) That he or she may assert these rights at any time; and
 - (v) The nature of the complaint against the accused.
- (b) If arrested pursuant to a warrant, the accused shall receive a copy of the warrant at the time of the arrest or as soon after as is possible.

24.21.09 Emergency Medical Care / Suicide Prevention

- (a) Any time after a person is arrested until such time as the person has been released, law enforcement shall ensure that the person has access to any needed emergency medical care. When law enforcement knows, or should reasonably know, that emergency medical care is needed they shall transport the person to an Indian Health Services facility. If care is not available at an Indian Health Services facility, law enforcement shall transport the person to another facility where the person can receive medical

attention. When a person is transported to a facility other than Indian Health Services, law enforcement shall make a reasonable effort to follow the procedures necessary to ensure that Indian Health Services will cover the financial costs of the medical treatment.

(b) If the person being arrested appears to law enforcement to be highly intoxicated because of alcohol or drugs, law enforcement shall transport the person to an appropriate facility for treatment (detox, the care unit, etc.).

(c) If the person being arrested appears to law enforcement to be mentally unstable or at risk of suicide, law enforcement shall transport the person to St. Peters Hospital or another appropriate facility for seventy-two (72) hour surveillance and a thorough evaluation. A person who threatens suicide shall be considered by law enforcement to be at risk of suicide.

24.21.10 Summons in Lieu of Warrant

(a) When otherwise authorized to arrest a suspect, a Tribal Judge or Judicial Officer may, in lieu of a warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by the Tribal Court Clerk.

(c) If an accused fails to appear in response to a summons, a warrant for the arrest of the accused shall be issued.

24.21.11 Search Warrant – Defined

A search warrant is a written order, signed by a Tribal Judge or Tribal Judicial Officer, and directed to the Tribal Law Enforcement Officer ordering him or her to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched, describe the items to be seized, and shall specify the time the warrant is in effect.

24.21.12 Issuance of Search Warrant

(a) The Tribal Judge or Tribal Judicial Officer shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the Tribal Court.

(b) A warrant for search and seizure shall be issued only if the Tribal Court finds there is probable cause to believe that a search will discover:

- (i) Stolen, embezzled, or otherwise unlawfully possessed property;
- (ii) Property which has been or is being used to commit a criminal offense;
- (iii) Contraband or controlled substances as defined by this Title; or
- (iv) Property which constitutes evidence of a criminal offense.

(c) Probable cause to search and seize shall be supported by a sworn written statement or an oral statement made in open court based upon timely and reasonably reliable information.

24.21.13 Emergency Search Warrants

The Court may issue an emergency search warrant by faxing a signed copy of the search warrant to the Court Clerk if the Court has received all the information required under subsection 24.16.12 and the Court determines that circumstances exist such that it is necessary to issue a warrant before the next scheduled court date.

24.21.14 Execution and Return of Search Warrant

Warrants for search and seizure shall be executed only by Tribal Law Enforcement Officers. The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not executed and returned within such time limits shall be void.

24.21.15 Search Without a Warrant

(a) No Tribal Law Enforcement Officer shall conduct a search without a valid warrant, except:

- (i) The officer may conduct a search of the person incident to making a lawful arrest; or
- (ii) If written, signed consent to the search is given by a person having authority to consent; or
- (iii) When the officer has probable cause to believe that the person searched may be armed and dangerous; or
- (iv) When the search is of a vehicle and the officer has probable cause to believe that it contains a controlled substance, contraband, evidence of a crime, or stolen, embezzled or otherwise unlawfully held property; or
- (v) When the property seized is in plain view and the officer reasonable believes the property is a controlled substance, contraband, evidence of a crime, or stolen, embezzled or otherwise unlawfully held property; or
- (vi) When the search is of a vehicle made incident to the completion of regular and routine inventory after impound; or
- (vii) When emergency circumstances exist such as a situation where evidence might be destroyed or removed.

(b) This Code shall not prevent Tribal Fish and Game Officers from searching without a warrant pursuant to the provisions of the Nisqually Fishing and Hunting Code.

24.21.16 Disposition of Seized Property

(a) Tribal Law Enforcement Officers shall make an inventory of all property seized by warrant or otherwise and a copy of such inventory shall be left with the person from whom the property was taken.

(b) A hearing, after public notice when found appropriate by the court, shall be held by the court to determine the disposition of all property seized by law enforcement officers. Upon satisfactory proof of ownership, the property shall be delivered to the

owner, unless such property is a controlled substance, an illegally owned deadly weapon, contraband, is to be used as evidence in a pending case. Property taken as evidence shall be returned to the owner after final judgment. Property confiscated as a controlled substance shall be destroyed. Property confiscated as contraband shall become the property of the community and may be either destroyed, sold at public auction, retained for the benefit of the tribe, or otherwise lawfully disposed of as ordered by the court after consultation with the Tribal Council.

(c) Within sixty (60) days of the court's order for disposition of the property, Law Enforcement shall provide the court with a signed document certifying that the property was disposed of as ordered. If the property has not been completely disposed of within sixty (60) days, the document shall explain the reason for the delay.

(d) If a presumption has been raised that property is contraband, the presumption can only be overcome by a preponderance of evidence to the contrary.

24.22 SPEEDY AND PUBLIC TRIAL

24.22.01 Speedy and Public Trial

The Nisqually Tribal Court has the responsibility of insuring that each person charged with an offense under this Code receives a speedy and public trial.

24.22.02 Length of Time

(a) After the filing of a complaint against an individual, trial must be commenced within sixty (60) days unless a longer period is requested or consented to by the accused.

(b) If the accused is not in custody, the length of time for commencing the trial may be extended up to thirty (30) days to a total of ninety (90) days.

(c) The Tribal Court on its own motion may continue or postpone the case only when required in the administration of justice and so long as the defendant will not be substantially prejudiced in any way by the delay.

(d) Delays caused by a deferred prosecution, subject to Section 24.28 of this Code, shall not constitute impermissible or prejudicial delay.

24.23 ARRAIGNMENT

24.23.01 Arraignment

(a) Defined. Arraignment is a hearing at which the accused is brought before the Tribal Court informed of the charge and his or her civil rights, given an opportunity to enter a plea, and where bail is set.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody. In no case shall arraignment or a bail review hearing be held more than seventy-two (72) hours after an arrest if the person is still in custody.

24.23.02 Rights of Accused at Arraignment

Before an accused is required to plead to any criminal charge, the Tribal Judge or Tribal Judicial Officer shall:

- (a) Read to the accused and determine that he or she understands the complaint and the section of the Tribal Code which he or she is charged with violating, including the maximum authorized penalty; and
- (b) Advise the accused that he or she has the right to remain silent; to be tried by a jury if jail time is a possible penalty; the right to be represented by counsel at the accused's own expense; and that the arraignment may be postponed if the accused desires to consult with counsel before entry of a plea.
- (c) Advise the accused that he or she has the right to plead not guilty, guilty, or no contest and ask the accused if he or she is ready to plead.
- (d) Entertain motions to set aside the charges, such as: the complaint is insufficient on its face, probable cause is lacking, or there is a lack of jurisdiction. The court will rule from the bench on any motions to set aside charges.

24.23.03 No Motions for Disqualification at Arraignment

The court will not entertain motions for disqualification of the judge at arraignment. The procedural nature of the arraignment and the protections incorporated preclude the necessity for disqualification at this time.

24.23.04 Receipt of Plea at Arraignment

- (a) If the accused pleads "not guilty" to the charge, the Tribal Judge or Tribal Judicial Officer shall then inform the accused of a trial date and shall set conditions for bail or other release prior to trial. The judge or judicial officer may ask the defendant whether he or she wishes to waive a jury trial, but a jury trial waiver shall be accepted in criminal cases only if the defendant signs a written waiver after questioning by the judge.
- (b) If the accused pleads "guilty" to the charge, the Tribal Judge or Tribal Judicial Officer shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which the accused is waiving by the plea. The judge may then reject or accept the guilty plea. If the guilty plea is accepted by the judge, he or she may then impose sentence or defer sentencing for a reasonable time in order to obtain any information deemed necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.
- (c) A defendant may plead "no contest" only with the consent of the judge. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. A plea of "no contest" shall be treated as a plea of "guilty" for the purposes of the entry of judgment. A no contest plea cannot be used against the defendant as an admission in any civil suit related to the same act.

- (d) If the accused refuses to plead, the Tribal Judge or Tribal Judicial Officer shall enter a plea of not guilty on behalf of the accused.
- (e) The court will not be bound by any plea resulting from a plea bargain agreement unless the judge has been fully advised of the agreement in open court and on the record.
- (f) A plea bargain will not be accepted by the court if there is any doubt as to the defendant's full understanding of the agreement; the judge will determine the level of understanding by personal questioning of the defendant.
- (g) A person charged with an alcohol or drug offense may request to be considered for a deferred prosecution or a deferred judgment program under this Code.

24.23.05 Copy of Complaint and/or Citation and Order on Release

At arraignment, the defendant shall be given:

- (a) A copy of the Tribal Court's order, setting forth the conditions of release, whether it be personal recognizance or something else, and including the time and date of trial; and,
- (b) A copy of the complaint and/or citation.

24.23.06 Withdrawal of Guilty Plea

- (a) A guilty plea entered in compliance with this Code shall be presumed valid. A defendant may move for withdrawal of his or her guilty plea upon a showing that either his or her rights have been violated, or that the plea was involuntary.
- (b) The Tribal Court may, in its discretion, allow an accused to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so. Extraordinary circumstances must be present to withdraw a guilty plea after sentencing.

24.23.07 Appearance of Attorneys/Counsel

Every defendant in a criminal proceeding has a guaranteed right to assistance of counsel, at his or her own expense. It is the personal responsibility of each defendant to obtain such representation if desired. Failure to obtain counsel before a scheduled hearing or trial will not normally be good cause to delay or continue a scheduled proceeding. Where no representative counsel has been retained before a proceeding commences, the court may require the defendant to represent himself or herself.

24.23.08 Joining or Separating Defendants' Trials

At arraignment, the judge may order two or more defendants to be tried together if they are charged with offenses based on the same event or interrelated series of events. All defendants shall be given adequate notice that they are to be tried together. Defendants shall not be tried together if a joint trial would prejudice the ability of any defendant to present a defense or would prejudice the Tribe's ability to present its evidence.

24.24 BAIL

24.24.01 Bail - Release Prior to Trial

- (a) Every person charged with a criminal offense before the Nisqually Tribal Court shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:
- (i) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times. The Tribal Court shall establish a list of factors to be considered when determining whether an accused in custody shall be granted release on personal recognizance.
 - (ii) Release after deposit into the Tribal Court of bond in either cash or other sufficient collateral by the accused, his family, a friend or a bondsman licensed by the State of Washington. The amount of bail shall be specified by the Tribal Judge, Tribal Judicial Officer, or bail schedule but in no case shall bail be set for more than five thousand dollars (\$5,000.00) per offense.
 - (iii) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required. Possible conditions include, but are not limited to, reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
- (b) Tribal law enforcement officers may release persons from custody prior to arraignment when the requirements for release set forth in subparagraph (1) have been met.

24.24.02 Bail Schedule

The Tribal Court judiciary may, at his or her discretion, set a bail schedule for the use of Tribal police.

24.24.03 Forfeiture of Bail

If the defendant fails to appear before the court as ordered by the court, the court may direct an entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit and issue a warrant for the arrest of the defendant.

24.24.04 Return of Surety

Any cash or other property given as security by the surety or defendant shall be returned by the court upon the entry of a not guilty verdict or the execution of sentence.

24.24.05 No Bail

The protection of individuals and the community demands that certain persons be held without bail or bond in exceptional circumstances. The Tribal Court, in its discretion, may refuse to provide release but only in the following situations:

- (a) The person has been charged with a crime of violence; and
 - (i) The person has been recently convicted of another crime of violence; or
 - (ii) The person has committed this offense while on probation or other release for another crime of violence; or
- (b) The person has been charged with obstructing justice by having threatened, injured or intimidated a Tribal Judge, witness or juror, or has attempted such threat, injury or intimidation; or
- (c) There is strong likelihood of flight to escape trial. Such a finding requires a documented history of such flight, or evidence or circumstances indicating that such flight is likely; or
- (d) The person represents a significant danger to the community. Such a finding requires a pattern of behavior evidenced by past and present conduct and a determination that no conditions for release are available which would reasonably assure the safety of the community.

24.24.06 No-Bail Hearings

- (a) Denial of a right to bail or bond shall occur only after such request is made by the Tribal Prosecutor, and the Tribal Court has immediately held a pretrial detention hearing and determined by clear and convincing evidence that there is a substantial probability that the accused committed the offense.
- (b) Where the Tribal Court finds that denial of bail or bond is proper, an order for detention shall be issued with the Tribal Court's findings of fact.
- (c) Where a person is held without bail or bond, his or her case shall be put on an expedited calendar and the trial shall be given priority over other pending cases. If a conviction results, the defendant shall be credited with the time served pending trial.

24.24.07 Bail - Release Pending Appeal

Every person who has been convicted of a tribal offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of this Section, unless the Trial Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a significant danger to the community, to the accused or to any other person. If the Trial Tribal Judge finds such to be the case, the detention of the accused may be ordered.

24.25 DISCOVERY

24.25.01 Discovery by Defendant

Upon request of the defendant, at or before trial, the Tribe shall give the defendant the following:

- (a) The names of witnesses the Tribe intends to present;

(b) Copies of or access to any documents, photographs, results and reports of examinations or tests, and objects which are within the custody or control of the Tribe and which the Tribe intends to use as evidence against the defendant or which may be relevant to the accused person's defense;

(c) Copies or written summaries of any statement made by the defendant which the Tribe intends to offer as evidence against the defendant.

24.25.02 Discovery by the Tribe

If the defendant requests information as provided in subsection 24.20.01, then defendant shall give the Tribe, upon the Tribe's request, the names of defendant's witnesses, and copies or access to all evidence which the defendant intends to use.

24.25.03 Communications in Preparation for Trial

Nothing in this Section shall require a party to provide the other with reports, memoranda, or other internal communications which were made by the party or by his or her representative solely in preparation for trial, except items specifically listed in this rule.

24.25.04 Response to Discovery Request

(a) A party who receives a request for information under this rule shall respond either with the information, with an indication when and where the information will be made available, or with an objection to the request within ten days after he or she receives the request. Failure to respond is grounds for a court order requiring response.

(b) If the parties disagree about whether a party is required to provide information requested pursuant to this rule, the judge shall decide. The judge may impose reasonable conditions on the release of information requested under this rule.

24.26 TRIAL

24.26.01 Rights of Defendant

In all criminal prosecutions, the defendant shall have the following rights:

(a) The right to be present throughout the proceeding and to defend himself in person or by counsel at his or her own expense;

(b) The right to know the nature and cause of the charge and to receive a copy of the complaint;

(c) The right to meet witnesses against him face to face, except in the case of child witnesses as provided in subsection 24.21.06;

(d) The right to compulsory process to obtain the testimony of witnesses in his behalf and physical evidence;

(e) The right to a speedy public trial by an impartial jury; and

(f) The right not to testify. The failure of the defendant to testify shall not be construed against him or commented upon by the prosecution.

24.26.02 Pretrial Motions and Conferences

(a) Questions and disputes regarding procedure and any defenses, objections, or issues which may be resolved without a trial of the facts on which the prosecution is based may be raised with the court in the form of a pre-trial motion. A copy of any pre-trial motion shall be delivered to the non-moving parties who shall have an opportunity to respond to the motion.

(b) At any time after arraignment up to and including the beginning of trial, the judge may schedule an informal conference of the judge and all parties to consider questions of procedure and other matters which will promote a fair and efficient trial.

24.26.03 Motions for Disqualification

(a) Motions for disqualification of the judge may be heard at any time after arraignment and prior to the closing arguments of the parties.

(b) A judge may disqualify himself or herself from a case on the judge's own motion if the Judge determines that he or she will not be able to hear the case in a fair and impartial manner.

(c) No judge shall be qualified to act in a case wherein he or she has any direct interest or wherein any relative by blood or marriage, in the third degree or closer, is a party.

24.26.04 Order of Trial

At trial, after the jury has been sworn in, evidence and arguments shall be presented in the following order, unless the judge sets or the parties agree to a different procedure:

- (a) The Court shall read the complaint and state the defendant's plea.
- (b) The opening statements shall be made by the prosecutor and the defendant or his or her counsel.
- (c) Evidence shall be presented in support of the charge, and defendant or his or her counsel shall have the right to cross-examine any witness called by the prosecution.
- (d) The defendant or his or her counsel shall present the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defendant or his or her counsel.
- (e) The parties may then offer rebutting testimony only, except that the court may, in the interest of justice, permit the introduction of new evidence.
- (f) The prosecution and the defendant or his or her counsel may argue the case, the prosecution having the right to open and close.

24.26.05 Judgment of Acquittal

The defendant may make a motion for judgment of acquittal at the close of the evidence offered by the prosecution or at the close of all evidence. If the evidence is not sufficient to support a conviction of the offenses charged, the court shall order the entry of judgment of acquittal of the offenses charged. The court may also enter a judgment of acquittal on its own motion after the evidence on either side is closed, and shall do so if the evidence is not sufficient to support a conviction of the offense charged.

24.26.06 Jury Instructions

- (a) The judge shall instruct the jury orally and in writing, stating the law applicable to the case. The judge must make clear to the jurors the elements necessary for conviction of an offense.
- (b) The judge shall instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, that if the defendant did not testify, that his or her failure to testify shall not be considered as evidence that he or she is guilty.
- (c) Either party may propose instructions to the jury which may be allowed by the trial judge if he finds that such instructions further the interests of justice.
- (d) At any time during the trial the judge may give the jury such instruction as to the law as he or she considers necessary.
- (e) Objections to the instructions not made before the jury retires to determine its verdict shall be deemed waived.

24.26.07 Jury Deliberations

- (a) In all jury cases the judge shall instruct the jury that they shall retire to consider the matter and that each juror shall be given an opportunity to state his or her opinion and that they shall select a foreman.
- (b) The jury shall be instructed that it must be unanimous in order to return a verdict of guilty.

24.26.08 Jury Verdicts

- (a) After the charge, the jury shall retire to determine a verdict. The jury must render a verdict on every allegation in the complaint. After the verdict of the jury has been announced in open court, the judge shall discharge the jury. The court shall thereafter enter judgment upon each verdict.
- (b) The judge shall declare a mistrial if, after lengthy deliberation, the jurors cannot unanimously vote for conviction or acquittal. The plaintiff or prosecutor shall be granted a new trial, upon request, which shall be re-tried before a new jury or before the judge.

24.26.09 Standard of Proof

Conviction of a criminal offense shall be by a finding that the evidence shows beyond a reasonable doubt that the accused has committed the offense with which he or she is charged and tried.

24.27 POST VERDICT

24.27.01 Acquittal

If the court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of acquittal shall be announced and entered into the official records by the Court Clerk, along with the names of the jurors in the case, and the defendant shall be immediately discharged.

24.27.02 Conviction and Sentencing

- (a) Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct, the judge shall sentence the defendant in accordance with the applicable provisions of this Code, and deliver the law enforcement officer a signed copy of the sentence.
- (b) The judgment of conviction shall state the charge, the plea, the verdict and the sentence. The judgment shall be signed by the judge and entered into the official record by the Court Clerk. The judgment shall direct that the prisoner be held in custody until the prisoner has satisfied the sentence according to law.

24.27.03 Motion for New Trial

- (a) When the defendant has been found guilty by a jury or by the court, the court on motion of the defendant, or on its own initiative with the consent of the defendant, may order a new trial.
- (b) A motion for a new trial shall be made no later than fifteen (15) days after the verdict has been rendered.
- (c) The court may grant a new trial for any of the following reasons:
 - (i) The verdict is contrary to law or to the weight of the evidence;
 - (ii) The prosecutor has been found guilty of misconduct;
 - (iii) A juror or jurors have been guilty of misconduct;
 - (iv) The court erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
 - (v) For any other reason not due to his own fault the defendant has not received a fair and impartial trial.

24.27.04 Motion for New Trial Based on New Evidence

A motion for a new trial based on new evidence may be made by the defendant at any time after the defendant has been found guilty by a jury or by the Court, provided, however that the Court shall not grant a motion for new trial based on new evidence unless the Court determines that:

- (a) The new evidence could not have been discovered through the exercise of due diligence at the time of trial; and
- (b) There is a strong likelihood that the defendant would not have been found guilty had the new evidence been available at the time of trial.

24.27.05 Right of Appeal

Upon imposing sentence in a case which has gone to a trial on a plea of not guilty, the court shall advise the defendant of his right to file an appeal within fifteen (15) days.

24.27.06 Appeal Bond

- (a) At the time of sentencing, the Trial Court may fix the amount of bond to be posted in the event an appeal is filed, or may specify that the appeal may be taken on the defendant's own recognizance, or may deny bail.
- (b) In a case in which the defendant has been sentenced to jail time, determination of the amount of bond, conditions of release, or denial of release shall be based upon a new evaluation of the case. After conviction, the burden of establishing that the defendant will not flee or pose a danger to the community rests with the defendant.
- (c) Execution of the sentence shall be stayed pending appeal when the defendant posts an appeal bond in accordance with the court's order, or when the appeal is taken on the defendant's own recognizance.
- (d) If the Trial Court does not allow the appeal to be taken while the defendant is on his own recognizance, or determines that the defendant is to be held without bond, the defendant may petition the Court of Appeals, at any time after the entry of the order of the Trial Court denying release, to stay the execution of the sentence and to allow the defendant to be released upon his or her own recognizance or to set bond, or to otherwise modify the conditions of release. If the Court of Appeals denies the requested relief, the appeal may be taken, but the execution of sentence shall not be stayed until the defendant has met the conditions established by the Trial Court.
- (e) Any defendant in custody during the appeal shall receive the same benefits and credits in the computation of the sentence as if no appeal had been taken.
- (f) Failure of the defendant to prosecute the appeal shall result in revocation of release and execution of the sentence.

24.28 SENTENCING

24.28.01 Sentencing

Any person who has been convicted of a criminal offense in the Nisqually Tribal Court may be sentenced to one or a combination of the following penalties:

- (a) Imprisonment for a period not to exceed the maximum permitted by the Law and Order Code provision defining the offense, which in no case shall be greater than that permitted by tribal or federal law.
- (b) A fine in an amount not to exceed the maximum permitted by the Law and Order Code provision defining the offense, which in no case shall be greater than that permitted by tribal or federal law.
- (c) Home detention may be imposed in lieu of imprisonment, provided that the circumstances of home confinement are sufficient to ensure compliance, including the detection of any violation. The rental cost of equipment required to ensure compliance, such as electronic detention bands, shall be borne by the offender.
- (d) Suspension or revocation of some or all privileges, licenses and permits granted by the Tribe.
- (e) Enrollment in a treatment program.
- (f) Restitution or compensation of the injured party by means of the surrender of property, payment of damages, or the performance of any other service for the benefit of the injured party. The amount of restitution shall be within the discretion of the court to determine. In the case of death, the court may require the defendant to pay funeral expenses and restitution to the victim's survivors.
- (g) Court-ordered assistance with tribal functions, a written and/or oral apology to the General Council or any body thereof, and/or a barring of up to six months from any specified tribal building or facility.

24.28.02 Suspended Sentence

The court may suspend all or part of sentence on such conditions as the court deems just. If the defendant fails to abide by the conditions set by the court, such suspension may be revoked, provided that such revocation shall not be ordered without a hearing before the court at which time the offender shall have an opportunity to explain the reasons for his or her failure.

24.28.03 Time Payments

If a convicted offender is unable to immediately pay a fine or the assessed costs, the Court may allow him or her to make reasonable installment payments to the Court Clerk at specified intervals until the entire sum is paid. If the offender defaults on such payments, the Court may find him in contempt of court and imprison the offender or impose additional sanctions.

24.28.04 Community Service

Upon a showing of financial hardship, the court may sentence a defendant to perform community service hours in lieu of payment of a fine imposed. Each hour of community service shall reduce the fine by the amount of federal minimum wage at the time of sentencing. Community service hours shall only be imposed for non-felony criminal offenses, offenses committed by minors, and civil fishing cases. Adequate supervision must be available before community service hours are imposed.

24.28.05 Credit for Time Served

A defendant shall be credited with time served in jail pending trial when he or she is held without bail or bond. Other defendants may receive credit for time served in the discretion of the court.

24.28.06 Use of Prior Convictions in Sentencing

For subsequent violations of the criminal laws of the Nisqually Tribe, the Court shall impose more than any minimum penalty established for the offense. Multiple offenses arising from the same factual incident shall not constitute “subsequent” violations for purposes of this section. The Tribal Court shall impose one or more of the following penalties for subsequent violations of the criminal laws of the Tribe:

- (a) A fine and/or jail time in excess of the last sentence imposed; or
- (b) Forfeiture of property lawfully seized in connection with the offense; or
- (c) Suspension or revocation of some or all privileges, licenses and permits granted by the Tribe.

24.29 DEFERRED COURT PROCEDURES FOR ALCOHOL AND DRUG OFFENSES

24.29.01 Request for Deferred Prosecution and for Deferred Judgment

A person charged with an offense allegedly committed while under the influence of drugs or alcohol may request to be considered for a deferred prosecution program or a deferred judgment program under this Section. The request shall be made before trial. The person’s request must state the following:

- (a) That the offense charged is the result of, or is caused by, their alcohol use, drug use, or dependency, for which the person is in need of treatment;
- (b) That without treatment, there is a probability of future recurrence of similar misconduct; and
- (c) A history of the person’s alcohol or drug use or dependency that is relevant to the current charge.

24.29.02 Eligibility

A person charged with a criminal offense shall not be eligible for a deferred prosecution program more than once in a five-year period.

24.29.03 Drug and Alcohol Evaluation

Upon consideration of a request for either a deferred prosecution or deferred judgment, the Tribal Court may continue the arraignment and refer the person to the Tribe's or other alcohol or drug programs for diagnostic investigation and evaluation, the cost of which is to be carried by that person. The Counselor shall make a written report to the Tribal Court with a copy to the defendant including the following findings:

- (a) Whether the person suffers from an alcohol or drug dependency;
- (b) Whether there is a probability that similar misconduct will recur if not treated;
- (c) Whether effective treatment is available; and
- (d) The type of treatment recommended; and
- (e) If treatment is recommended, a treatment plan specifying the location, nature, length, treatment time schedule and cost.

24.29.04 Court Order Based on Evaluation Report

If the Tribal Court approves the plan, and the defendant agrees to comply with the terms and conditions of the plan and agrees to pay the cost thereof, the Tribal Court shall order that the defendant be accepted for either a deferred prosecution program or a deferred judgment program. If treatment is not recommended or not approved, or the defendant declines to accept the treatment plan, the defendant's prosecution shall resume.

24.29.05 Admissibility of Evidence

Evidence resulting from the defendant's request and/or investigation or report shall be inadmissible in any trial on the charges, but may be used after conviction in determining a sentence if the defendant consents.

24.29.06 Failure to Comply with Conditions

If a defendant in either a deferred prosecution or deferred judgment program fails or neglects to fulfill any term or condition of the treatment plan, the facility or agency administering the treatment shall report the breach to the Tribal Prosecutor. Upon receiving such a report, the Tribal Court shall hold a hearing to determine whether the defendant should be removed from the deferred prosecution or deferred judgment program. If removed from deferred prosecution or deferred judgment program, the defendant's prosecution shall resume.

24.29.07 Effect of Subsequent Conviction

If a defendant is convicted in any court of a subsequent offense similar to the one for which he or she is in a deferred prosecution or a deferred judgment program, the Tribal Court shall remove the defendant from that deferred program and the defendant's prosecution on the original charge shall resume.

24.29.08 Two Year Maximum for Deferment Programs

The length of the deferment program shall be left to the Tribal Court's discretion but in no case shall it extend for more than two (2) years from the date of the court's approval of the defendant's deferred program.

24.29.09 Charges Dismissed

At the end of the deferred prosecution program, the charges against the defendant shall be dismissed. The dismissal shall constitute an absolute bar to a subsequent action involving the same claim.

24.29.10 Effect of Defendant's Delay

Delay in bringing a case to trial caused by a defendant requesting a deferred prosecution or a deferred judgment shall not be grounds for dismissal.

CHAPTER IV – APPELLATE PROCEDURE

24.30 APPEALS

24.30.01 Court of Appeals – Composition

The Court of Appeals shall consist of a panel of three (3) qualified judges. The judge whose decision is being appealed shall not select or be a member of the panel.

24.30.02 Court of Appeals – Jurisdiction

The Court of Appeals shall have jurisdiction to hear and determine appeals from Tribal Trial Court final judgments, rulings that substantially alter the course of trial court proceedings, sentencing or disposition orders.

24.30.03 Who May Appeal

Any party may appeal a final decision of the tribal court, provided that the Tribe may not appeal the acquittal of a defendant charged with an offense under this Code.

24.30.04 Court of Appeals - Notice of Appeal

- (a) A party may initiate an appeal by filing a written Notice of Appeal with the Court Clerk within fifteen (15) days of the Trial Court ruling being appealed. A notice should only be filed if the appeal satisfies the grounds for Court of Appeals jurisdiction, as set forth above.
- (b) A Notice of Appeal shall be titled as such and shall:
 - (i) Name the parties and their spokespersons, if any;
 - (ii) State the case number, date and nature of the decision appealed from;
 - (iii) Specify those parts of the decision which the party wants reviewed; and
 - (iv) List each error of law or procedure which the appellant claims was committed by the Nisqually Tribal Court and its effect on the outcome of the case.
- (c) The Court Clerk must serve the Notice on all parties of record and their counsel, if any.

24.31 APPELLATE TRIAL

24.31.01 Court of Appeals - Hearings and Continuances

- (a) Within sixty (60) days from the date of filing of a written Notice of Appeal, the appellate panel shall convene to hear the case on appeal at such place as may be designated, unless continued by order of the appellate panel's Chief Judge.
- (b) Prior to a final appellate decision, any judge on the panel, or a judicial officer designated by the Appellate Chief Judge, may preside over any scheduled hearings or other procedural matters that do not substantially prejudice the rights of any party to a full and fair appellate hearing.
- (c) Any party may make motions to the Court of Appeals and have them ruled upon by a single judge of the panel within a reasonable time, provided that reasonable notice of the motion and opportunity to be heard are afforded to all parties to the case.

24.31.02 Court of Appeals - Brief Filing

- (a) Within thirty (30) days of notice that the Court of Appeals accepts review, the party making the appeal shall file a written brief or statement in support of his appeal with the Court of Appeals and serve it on all parties to the case. The Court of Appeals may allow a longer time for filing, in its discretion.
- (b) Within forty-five (45) days of the filing of the Notice of Appeal, any party other than the one who filed the Notice may submit a written brief to the Court of Appeals setting forth that party's position and responding to the party who filed the Notice. This brief, if any, shall be filed with the Court Clerk, who shall transmit it to the judges of the Court of Appeals panel and shall serve it on all parties to the case. A response shall be allowed the appellant in the Court's discretion.
- (c) The respondent shall have thirty (30) days after service of appellant's brief in which to file a reply brief or statement and shall serve a copy on each party.
- (d) All briefs shall be accompanied by an affidavit of service on opposing parties.

24.31.03 Court of Appeals - Conduct of Hearing

At the hearing to determine the merits of the appeal, all parties to the case shall be given the same amount of time, set by the Chief Judge of the Court of Appeals, in which to present their position. The Court of Appeals may permit the party who filed the Notice of Appeal to speak both first and last.

24.31.04 Court of Appeals – Decision

The Court of Appeals' decision shall be made by a majority vote of the judges. The Court may announce its decision at the hearing to decide the appeal. The Court may dismiss an appeal, affirm or modify the Trial Court's judgment, reverse the judgment in whole or in part, order a new trial, or take any other action as the merits of the case and the interest of justice may require.

24.31.05 Court of Appeals - Written Opinion

The Court of Appeals shall prepare a written opinion setting forth the grounds for its decision and the specific relief ordered within thirty (30) days of the hearing. The written opinion must be filed with the Court Clerk, who shall mail a copy of the opinion to the lower court and to all parties. The Court Clerk shall keep all written opinions of the Court of Appeals on file so that they are readily accessible to all interested persons.

24.31.06 Evidence Considered on Appeal

The Court of Appeals shall consider only the record of the case, statements filed with the Court, and the arguments of the parties unless the Court determines that injustice will result from its failure to consider additional evidence not presented to the Trial Court.

24.31.07 Majority Vote Required

The Court of Appeals may, by majority vote, affirm or reverse or otherwise modify the Trial Court's decision either in whole or in part, and/or reduce any sentence or penalty imposed by the Trial Court in a criminal case and/or reduce damages awarded in a civil case, and/or remand the case back to the Trial Court for further proceedings.

24.32 WRIT OF HABEAS CORPUS

24.32.01 Writ of Habeas Corpus

Every person imprisoned or otherwise restrained of liberty on the Reservation, or by order of the Nisqually Tribal Court, may petition the United States Federal Court for a writ of habeas corpus to inquire into the reasons for such imprisonment or restraint, and if such reasons are found to be illegal, the detainee shall be released from custody by order of the court.

CHAPTER V – PROBATION

24.33 PROBATION

24.33.01 Establishment of Tribal Court Probation Services

There is established a Tribal Court Probation Services (hereafter a “TCPS”), the purposes of which include the protection of the community by providing for the acceptance of custody, the supervision, and the rehabilitation of juvenile and adult offenders placed on probation by the Tribal Court.

24.33.02 Declaration of Purpose and Policy

The Tribal Council finds and declares that probation is a desirable disposition of appropriate criminal cases because:

- (a) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by the Court;
- (b) The offender remains under the supervision of the Court while engaging in the educational, therapeutic, and community restorative pursuits that help foster a successful rehabilitation;
- (c) It maximizes the liberty of the individual while demonstrating the authority of the law and effectively protecting the public from further violations of the law;
- (d) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and
- (e) It minimizes the impact of the conviction upon innocent dependents of the adult offender.

24.33.03 Definitions

As used in this Chapter, unless the context otherwise requires, the following definitions apply:

- (a) “Probation” means the release by the Court, with or without imprisonment, of a juvenile or adult offender found guilty of a crime upon verdict or plea, or on a deferred prosecution, subject to conditions imposed by the Court to include crime related and/or affirmative conduct conditions. Supervision shall be tolled during any incarceration time, absconding, and/or not otherwise available for supervision, subject to approval by the Court.
- (b) “Supervised Offender” is a juvenile or adult offender sentenced to probation, and subject to conditions imposed by the Court.

24.33.04 Powers of the TCPS Juvenile and Adult Probation Officer

Probation officers, in his or her supervision of juvenile or adult probationers, are vested with the following authority:

- (a) Determine ongoing reporting schedule for each individual probationer.
- (b) Ensure probationers are in full compliance with all court conditions.
- (c) Complete and file violation reports with the court for probationer's non-compliance.
- (d) Request preliminary hearings for probationer's non-compliance
- (e) Request bench warrants for probationer's non-compliance.

24.33.05 Juvenile/Adult Probation Duties

The duties of the TCPS are:

- (a) To undertake investigations and make reports, including a pre-sentence investigation, violation reports and other reports, which may include alternative sentencing recommendations, requested by the Tribal Court;
- (b) To supervise juvenile/adult probationers when ordered to do so by the Nisqually Tribal Court, in accordance with the conditions set by the court;
- (c) To assure that each probationer has been provided a copy of their Judgment and Sentence and that it has been reviewed with them in detail;
- (d) To regularly meet with, advise and consult with the probationer to encourage the improvement of his or her condition;
- (e) To keep chronological records and report on the progress of probationers supervised as the court may require;
- (f) To identify and, where necessary, mobilize Tribal or community programs to which probationers may be assigned for evaluation, treatment, or rehabilitation, or for the purpose of performing community services, and to monitor the execution and progress of any such court-ordered condition;
- (g) To cooperate with all agencies, Tribal, public, and private, that are concerned with the treatment or welfare of persons on probation.
- (h) Attend Preliminary and Revocation Hearings as required providing testimony to the court; and
- (i) Complete and submit a "Certificate and Order of Discharge" to the court for a probationer's successful completion of probation.

24.33.06 Preliminary Hearing

- (a) All probationers believed to have violated their probation are entitled to a Preliminary Hearing generally held on the next scheduled court day in order to determine if probable cause exist that a violation has occurred;
- (b) If probable cause is established, the probationer will be scheduled for a Revocation Hearing;
- (c) The court will determine whether the probationer is held in custody, allowed to bail, or release on their personnel recognizance pending the Revocation Hearing.

24.33.07 Probation Revocation Hearing

- (a) Probationers are entitled to a Revocation Hearing before the Court within 28 days after the Preliminary Hearing, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.
- (b) Supervised offenders do not have a right to a jury at a revocation hearing.
- (c) If the probationer admits to violating a condition(s) of probation, the Court, after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation, may revoke or modify the probation terms.
- (d) If the probationer does not admit to violating a condition of probation, the prosecutor has the burden of proving by a preponderance of the evidence that the probationer violated a condition(s) of the probation.
- (e) The probationer has a right to hire counsel at his/her own expense, and may call witnesses or introduce evidence on his or her own behalf, and may cross examine any prosecution witness. These rights are limited at the discretion of the Court.

24.33.08 Penalty Upon Revocation of Probation

A person who is found, after a Revocation Hearing, to have violated a condition(s) of probation may be required to:

- (a) Serve detention or jail time up to the entire period based on the original conviction (class of offense) and presumptive sentencing ranges for terms of confinement; and/or
- (b) Serve up to 90 days for each violation; and/or
- (c) Be reinstated on active probation under the same or modified conditions; and/or
- (d) Have probation period extended or tolled.

CHAPTER VI – BIA RELATIONS WITH THE COURT

24.34 THE BIA AND THE NISQUALLY TRIBAL COURT

24.34.01 Prohibitions

No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Nisqually Tribal Court or influence such functions in any manner except as permitted by this Code, a resolution or in response to a request for advice or information from the Court.

Certification

I certify that the above Title 24 (Judiciary and Judicial Procedure) was enacted to replace and supersede the previous Title 24 of the Nisqually Law and Order Code at a regular meeting of the Nisqually Tribal Council held on the 30th day of October, 2012 at the Nisqually Tribal Center, at which time a quorum was present and voting _____ FOR _____ AGAINST _____ ABSTENTIONS.

ATTEST:

Cynthia Iyall, Chairman
Nisqually Indian Tribe

Jean Sanders, Secretary
Nisqually Indian Tribe